

(C) Museum programs may be made accessible to other physically impaired persons by means such as lowering display cases; spacing exhibits to facilitate movement; using ramps in galleries; increasing lighting in exhibit areas to facilitate viewing from a distance; providing places to sit in exhibit areas; making restrooms accessible; using large-print exhibit display cards to facilitate reading from a distance; and sensitizing museum staff to consider the needs of handicapped visitors when organizing exhibits.

(ii) DoD Component guidelines developed in accordance with paragraph (c)(5) of this section shall identify military museums subject to paragraph (c) of this section and shall contain a plan for making museum programs accessible to handicapped persons. Technical assistance in the preparation and content of these plans may be obtained from the National Access Center, 1419 27th Street, NW., Washington, DC 20007 ((202) 333-1712 or TTY (202) 333-1339). In addition, community organizations that serve handicapped persons and handicapped persons themselves shall be consulted in the preparation of these plans.

(d) *Reasonable accommodation.* (1) A recipient or DoD Component shall make reasonable accommodation to the known physical or mental limitations of an otherwise qualified handicapped applicant or employee unless the recipient or DoD Component demonstrates to the ASD(MRA&L), or designee, that the accommodation would impose an undue hardship on the operation of its program.

(2) Reasonable accommodation includes the following:

(i) Making facilities used by employees readily accessible to and usable by handicapped persons.

(ii) Job restructuring; part-time or modified work schedules; acquisition or modification of equipment or devices, such as telecommunication or other telephonic instruments; the provision of readers or certified sign-language interpreters; and similar actions.

(3) In determining whether an accommodation would impose an undue hardship on the operation of a recipient's or DoD Component's program, the ASD(MRA&L), or designee, shall con-

sider the following factors, at a minimum:

(i) The overall size of the recipient's or DoD Component's program or activity, such as the number of employees, number and type of facilities, and size of budget.

(ii) The size of the recipient's or DoD Component's operations, including the composition and structure of the recipient's or DoD Component's workforce.

(iii) The nature and cost of the accommodation needed.

(4) A recipient or DoD Component may not deny any employment opportunity to a qualified handicapped employee or applicant for employment if the basis for the denial is the need to make reasonable accommodation to the physical or mental limitations of the employee or applicant.

§ 56.9 Ensuring compliance with this part in Federal financial assistance programs and activities.

(a) *Supplementary guidelines issued by DoD Components.* (1) Whenever necessary, DoD Components shall publish supplementary guidelines for each type of program or activity to which they disburse Federal financial assistance within 120 days of the effective date of this part or of the effective date of any subsequent statute authorizing Federal financial assistance to a new type of program or activity. DoD Components shall obtain approval of these supplementary guidelines from the ASD(MRA&L), or designee, before issuing them. Prior to their issuance, the ASD(MRA&L), or designee, shall submit supplementary guidelines prepared pursuant to paragraph (a)(1) of this section to the Coordination and Review Section, Civil Rights Division, Department of Justice, for review and approval. To the extent that supplementary guidelines issued by DoD Components deal with the employment of civilians in programs and activities subject to this part the ASD(MRA&L), or designee, shall also obtain the approval of the Equal Employment Opportunity Commission (EEOC) in accordance with Executive Order 12067.

(2) The ASD(MRA&L), or designee, and DoD Components shall ensure that

their supplementary guidelines conform to the requirements of this part and that they provide:

- (i) A description of the types of programs and activities covered.
- (ii) Examples of prohibited practices likely to arise with respect to those types of programs and activities.
- (iii) A list of the data collection and reporting requirements of the recipients.
- (iv) Procedures for processing and investigating complaints.
- (v) Procedures for hearings to determine compliance by recipients with this part.
- (vi) Requirements or suggestions for affirmative action on behalf of qualified handicapped persons.
- (vii) Requirements for the dissemination of program and complaint information to the public.
- (viii) A description of the form of the assurances that must be executed pursuant to paragraph (b) of this section, and sample assurances.
- (ix) Requirements concerning the frequency and nature of postapproval reviews conducted pursuant to paragraph (h) of this section.
- (x) A period of time, provided for by § 56.8(c)(2)(ii)(B), for the development of a transition plan that sets out the steps necessary to complete structural changes that might be required by § 56.8(c).
- (xi) The maximum period of time that may be allowed for extensions that might be granted pursuant to § 56.8(c)(2)(ii).
- (xii) An appendix that contains a list of identified programs and activities of the type covered by the supplementary guidelines, including the names of the programs and activities and the authorizing statute, regulation, or directive for each program and activity.
- (xiii) Requirements for the recipient to designate a responsible official to coordinate the implementation of supplementary guidelines.
- (xiv) Requirements for any other actions or procedures necessary to implement this part.

(3) When the head of a DoD Component determines that it would not be appropriate to include on or more of the provisions described in paragraph (a)(2) of this section, in the supple-

mentary guidelines of that DoD Component or that it is not necessary to issue such guidelines at all, the reasons for such determination shall be stated in writing and submitted to the ASD(MRA&L), or designee, for review and approval. Once that determination is approved, the DoD Component shall make it available to the public upon request.

(4) The heads of DoD Components, or designees, shall be responsible for keeping the supplementary guidelines current and accurate. When a DoD Component determines that a program or activity should be added to or deleted from the guidelines, the DoD Component shall notify the ASD(MRA&L), or designee, in writing.

(b) *Required assurances.* (1) DoD Components shall require all recipients to file written assurances that their programs or activities will be conducted in accordance with this part and supplementary guidelines promulgated by DoD Components. If a recipient fails to provide an assurance that conforms to the requirements of this section, the DoD Component shall attempt to effect compliance pursuant to paragraphs (f) through (h) of this section, provided that if assistance is due and payable to the recipient based on an application approved prior to the effective date of this part the DoD Component shall continue the assistance while any proceedings required by paragraphs (n) through (v) of this section, are pending.

(2) DoD Components shall advise each recipient of the required elements of the assurance and, with respect to each program or activity, of the extent to which those receiving assistance from recipients shall be required to execute similar assurances.

(3) DoD Component shall ensure that each assurance:

- (i) Obligates the recipient to advise the DoD Component of any complaints received that allege discrimination against handicapped persons.
- (ii) Obligates the recipient to collect and provide the items of information that the DoD Component lists in its supplementary guidelines pursuant to paragraph (a)(2)(iii) of this section.
- (iii) Is made applicable to any Federal financial assistance that might be

disbursed by a DoD Component without the submission of a new application.

(iv) Obligates the recipient, when the financial assistance is in the form of property, for the period during which the property is used under a financial assistance agreement or is possessed by the recipient.

(v) Includes a provision recognizing that the U.S. Government has the right to seek judicial enforcement of section 504 and this part.

(c) *Self-evaluation and consultation with interested persons and organizations.*

(1) DoD Components shall require recipients to conduct, within 6 months of the effective date of this part or of first receiving Federal financial assistance disbursed by the Department of Defense, a self-evaluation with the assistance of interested persons, including handicapped persons or organizations that represent them. When appropriate, DoD Components also shall require recipients to consult at least annually with such persons. The “Department of Health, Education, and Welfare Section 504 Technical Assistance Reserve Directory,” April 1980, shall be consulted to identify likely sources for consultation. In conducting its self-evaluation, each recipient shall:

(i) Evaluate the effects of its policies and practices with respect to its compliance with this part and the applicable DoD Component’s supplementary guidelines.

(ii) Modify any policies that do not meet such requirements.

(iii) Take appropriate remedial steps to eliminate the discriminatory effects of any such policies or practices.

(2) For at least 3 years following the completion of a self-evaluation required under paragraph (c)(1) of this section, a recipient shall maintain on file, make available for public inspection, and provide to the ASD(MRA&L), or designee, upon request:

(i) A list of the interested persons (last names, first names, and middle initials) consulted.

(ii) A description of areas examined and problems identified, if any, with respect to those areas.

(iii) A description of any modification made and remedial steps taken.

(d) *Dissemination of information.* (1) Within 90 days of the effective date of this part or of first receiving assistance from the Department of Defense and on a continuing basis thereafter, each recipient shall notify beneficiaries and employees of their rights under this part and shall take appropriate steps to notify participants, beneficiaries, applicants for employment and employees, including those with impaired vision or hearing, and unions or professional organizations involved in collective bargaining or professional agreements with the recipient that the recipient does not discriminate on the basis of handicap in violation of this part. The notification shall state, when appropriate, that the recipient does not discriminate in admitting or providing access to or treating or employing persons in its programs and activities. Such notification may be accomplished by posting notices, publishing announcements in newspapers and magazines, placing notices in its publications, or distributing memoranda or other written communications.

(2) If a recipient publishes or uses and makes available to participants, beneficiaries, applicants for employment, or employees recruitment materials or publications containing general information about the recipient’s programs and activities, it shall include in those materials or publications a statement of the policy described in paragraph (d)(1) of this section. This may be accomplished by including appropriate inserts in existing materials and publications or by revising and reprinting the materials and publications.

(3) Understandable materials developed in accordance with this section shall be provided to ensure that all beneficiaries and employees of the recipient understand the information. In addition, recipients shall disseminate appropriate and comprehensive information about formal and informal complaint and appeal procedures, including directions on how and where to file complaints and to appeal DoD Component decisions.

(e) *Intimidation and interference.* Recipients and DoD Components shall take reasonable steps to ensure that no person intimidates, threatens, coerces, or discriminates against any individual

for the purpose of retaliating against, interfering with, or discouraging the filing of a complaint, furnishing of information, or assisting or participating in an investigation, compliance review, hearing, or other activity related to the administration of this part.

(f) *Staff responsibilities.* All DoD Component determinations of recipient compliance with this part shall be subject to reviews by the ASD(MRA&L), or designee. When responsibility for approving applications for Federal financial assistance disbursed by a DoD Component is assigned to regional or area offices of the DoD Component, personnel in such offices shall be designated to perform the functions described in paragraphs (h) and (o) through (w) of this section.

(g) *Access to records and facilities.* Each recipient shall permit access to its premises by DoD officials during normal business hours when such access is necessary for conducting onsite compliance reviews or complaint investigations, and shall allow such officials to photograph facilities and to inspect and copy any books, records, accounts, and other material relevant to determining the recipient's compliance with this part. Information so obtained shall be used only in connection with the administration of this part. If the recipient does not have the information requested, it shall submit to the DoD Component a written report that contains a certification that the information is not available and describes the good-faith efforts made to obtain the information.

(h) *Compliance review.* DoD Components shall determine the compliance of each recipient with this part as follows: (1) *General.* Whenever possible, DoD Components shall perform compliance reviews in conjunction with their review and audit efforts implementing title VI of the Civil Rights Act of 1964.

(2) *Desk audit application review.* Before approving an application for Federal financial assistance, the DoD Component concerned shall make a written determination as to whether the recipient is in compliance with this part, based on a review of the assurance of compliance executed by a recipient pursuant to paragraph (b) of this section, and other data submitted by the

recipient. When a determination cannot be made from the assurance and other data submitted by the recipient, the DoD Component concerned shall require the recipient to submit additional information and shall take other steps as necessary to determine the recipient's compliance with this part. If this additional information demonstrates that the recipient is in compliance with this part, the DoD Component shall notify the recipient promptly that it is in compliance.

(3) *Preapproval onsite review.* (i) When a desk audit application review conducted pursuant to paragraph (h)(2) of this section indicates that the recipient might not be in compliance with this part, the DoD Component concerned may conduct a preapproval onsite review at the recipient's facilities before approving the disbursement of Federal financial assistance to the recipient. The DoD Component shall conduct such a review:

(A) When appropriate, if a desk audit application review reveals that the recipient's compliance posture is questionable because of a history of discrimination complaints, current discrimination complaints, a noncompliance determination by another government agency or DoD Component, or other indications of possible noncompliance; or

(B) If Federal financial assistance is requested for construction, except under extraordinary circumstances, to determine whether the location and design of the project would provide service on a nondiscriminatory basis, in conformity with § 56.8(c).

(ii) Preapproval onsite reviews shall be conducted under DoD Component supplementary guidelines and in accordance with the provisions of paragraph (h)(4) of this section, concerning postapproval reviews.

(4) *Postapproval reviews.* DoD Components shall: (i) Establish and maintain effective programs of postapproval reviews.

(ii) Conduct such reviews of each recipient, the frequency and the nature of which shall be prescribed in the DoD Component supplementary guidelines implementing this part.

(iii) Require recipients periodically to submit compliance reports to them.

(iv) Record the results of the reviews, including findings of fact and recommendations.

(5) A DoD Component shall complete a review within 180 calendar days of initiating it unless an extension of time is granted by the ASD(MRA&L), or designee, for good cause shown, and shall either:

(i) Find the recipient to be in compliance and notify the recipient of that finding; or

(ii) Notify the recipient and the ASD(MRA&L), or designee, of a finding of probable noncompliance, pursuant to paragraph (o) of this section.

(i) *Filing of complaints against recipients.* (1) DoD Components shall establish and publish in their supplementary guidelines procedures for the prompt processing and disposition of complaints against recipients, consistent with this section.

(2) A DoD Component shall consider all complaints that: (i) Are filed with it within 180 days of the alleged discrimination or within a longer period of time if an extension is granted for good cause by the DoD Component with the approval of the ASD(MRA&L), or designee.

(ii) Include the name, address, and telephone number, if any, of the complainant; the name and address of the recipient committing the alleged discrimination; a description of the acts or omissions considered to be discriminatory; and other pertinent information.

(iii) Are signed by the complainant or the complainant's authorized representative (legal counsel or a person with power of attorney granted by the complainant).

(3) DoD Components shall transmit a copy of each complaint filed with them to the ASD(MRA&L), or designee, within 10 calendar days after its receipt.

(4) If the information in a complaint is incomplete, the DoD Component shall request the complainant to provide the additional information required. If the DoD Component does not receive this requested information within 30 calendar days of the date of the request, the case may be closed and the complainant so notified in writing.

(5) If a complaint concerning a program or activity is filed with a DoD Component that does not have jurisdiction over it, the DoD Component shall refer the complaint to the ASD(MRA&L), or designee, and advise the complainant in writing of such referral. The ASD(MRA&L), or designee, then shall refer the complaint to the appropriate DoD Component and so notify the complainant in writing.

(j) *Investigation by DoD components.*

(1) DoD Components shall investigate complaints that involve recipients and that meet the standards described in paragraph (i) of this section, unless good cause for not investigating is stated in a written notification of the disposition of the complaint provided to the complainant.

(2) If an investigation of a complaint is conducted, the DoD Component concerned shall maintain a case record that contains:

(i) The name (last name, first, and middle initial), address (street address, city, State, and zip code), and telephone number of each person interviewed.

(ii) Copies, transcripts, or summaries of pertinent documents.

(iii) A reference to at least one program or activity conducted by the recipient and receiving Federal financial assistance disbursed by a DoD Component, and a description of the amount and nature of the assistance.

(iv) A narrative report of the results of the investigation that contains references to relevant exhibits and other evidence that relates to the alleged violations.

(k) *Investigations by recipients.* (1) A DoD Component may require or permit recipients to investigate complaints alleging violation of this part. In such cases, the DoD Component shall:

(i) Ensure that the recipient investigates the complaints in accordance with the standards, procedures, and requirements prescribed in paragraph (j) of this section.

(ii) Require the recipient to submit a written report of each complaint and investigation to the DoD Component.

(iii) Retain a review responsibility over the investigation and disposition of each complaint.

(iv) Ensure that each complaint investigation is completed within 180 calendar days of the receipt of the complaint by the proper DoD Component, unless an extension of time is granted for good cause by the ASD(MRA&L), or designee.

(v) Require the recipient to maintain a log of all complaints filed against it, as described in § 56.6(a)(1).

(2) DoD Components that require or permit complaint investigations to be conducted by recipients shall review recipient complaint investigations pursuant to paragraphs (k) and (l) of this section.

(1) *Results of investigations.* (1) Within 180 days of the receipt of a complaint, the DoD Component, recipient, or the ASD(MRA&L), or designee, shall give written notification:

(i) Of the disposition of the complaint to the complainant and, as the case may be, to the recipient or DoD Component.

(ii) To the complainant that within 30 calendar days of receipt of the written notification, the complainant may request that the ASD(MRA&L), or designee, review the findings in the notification pursuant to paragraph (m) of this section.

(2) If the complaint investigation results in a determination by the DoD Component that a recipient is not complying with this part the DoD Component shall proceed as prescribed in paragraph (n) through (v) of this section. If the DoD Component determines that the recipient is in compliance, the DoD Component shall submit the complete case file to the ASD(MRA&L), or designee, within 15 calendar days after the notification of the disposition of the investigation to the complainant.

(m) *Reviewing completed investigations.* (1) The ASD(MRA&L), or designee, may review all completed investigations.

(2) The ASD(MRA&L), or designee, shall review the results of any investigation of a complaint if the complainant requests such a review pursuant to paragraph (1)(1)(ii) of this section.

(3) After reviewing the results of an investigation, the ASD(MRA&L), or designee, may:

(i) Find that no further investigation is necessary and approve the results of the investigation;

(ii) Request further investigation by the DoD Component; or

(iii) Require the DoD Component to take appropriate corrective action.

(n) *Effecting compliance.* (1) When a compliance review or complaint investigation indicates that a recipient has violated this part, the applicable DoD Component's supplementary guidelines, or the assurances executed pursuant to paragraph (b) of this section, the responsible DoD Component or the ASD(MRA&L), or designee, shall attempt to effect compliance in accordance with paragraphs (o) and (p) of this section. The inability of a DoD Component to comply with any time frame prescribed by this part does not relieve a recipient of the responsibility for compliance with this part.

(2) The DoD Component may require, when necessary to overcome the effects of discrimination in violation of this part, a recipient to take remedial action:

(i) With respect to handicapped persons who are no longer participants in the recipient's program or activity but who were participants in the program or activity when such discrimination occurred.

(ii) With respect to handicapped persons who would have been participants in the recipient's program or activity had the discrimination not occurred.

(iii) With respect to handicapped persons presently in the recipient's program or activity, but not receiving full benefits or equal and integrated treatment within the program or activity.

(o) *Written notice.* After evaluating the investigative report, the DoD Component shall issue to the recipient and, pursuant to paragraph (n)(2) of this section to the ASD(MRA&L), or designee, a written notice that:

(1) Describes the apparent violation and the corrective actions necessary to achieve compliance.

(2) Extends an offer to meet informally with the recipient.

(3) Informs the recipient that failure to respond to the notice within 15 calendar days of its receipt shall result in

the initiation of enforcement procedures described in paragraphs (r) through (v), of this section.

(p) *Attempting to achieve voluntary compliance by recipients.* (1) If a DoD Component issues a notice pursuant to paragraph (o) of this section, the DoD Component shall attempt to meet with the recipient and shall attempt to persuade it to take the steps necessary to achieve compliance with this part.

(2) If a recipient agrees to take remedial steps to achieve compliance, the DoD Component shall require that the agreement be in writing and:

(i) Be signed by the head of the DoD Component concerned, or designee, and by the principal official of the recipient.

(ii) Specify the action necessary to achieve compliance.

(iii) Be made available to the public upon request.

(iv) Be subject to the approval of the ASD(MRA&L), or designee.

(3) If satisfactory adjustment or a written agreement has not been achieved within 60 calendar days of the recipient's receipt of the notice issued pursuant to paragraph (o) of this section, the DoD Component shall notify the ASD(MRA&L), or designee, and state the reasons therefor.

(4) The DoD Component shall initiate the enforcement actions prescribed in paragraphs (r) through (v) of this section if:

(i) The recipient does not respond to a notice pursuant to paragraph (o) of this section, within 15 calendar days of its receipt and satisfactory adjustments are not made within 45 calendar days of the date of the recipient's response; or

(ii) The DoD Component or the ASD (MRA&L) determines at any time within 90 days after the recipient receives a notice pursuant to paragraph (o) of this section, that, despite reasonable efforts, it is not likely that the recipient will comply promptly and voluntarily.

(5) If, pursuant to paragraph (p)(4) of this section, the DoD Component initiates enforcement action, it also shall continue its attempts to persuade the recipient to comply voluntarily.

(q) *Imposing sanctions*—(1) *Sanctions available.* If a DoD Component has taken action pursuant to paragraphs

(o) and (p) of this section, the DoD Component may, by order, subject to paragraph (q)(2) and (q)(3) of this section:

(i) Terminate, suspend, or refuse to grant or continue assistance to such recipient.

(ii) Refer the case to the Department of Justice for the initiation of enforcement proceedings at a Federal, State, or local level.

(iii) Pursue any remedies under State or local law.

(iv) Impose other sanctions upon consultation with the ASD (MRASL), or designee.

(2) *Terminating, suspending, or refusing to grant or continue assistance.* A DoD Component may not terminate or refuse to grant or continue Federal financial assistance unless:

(i) Such action has been approved by the Secretary of Defense.

(ii) The DoD Component has given the recipient an opportunity for a hearing pursuant to the procedures set out in paragraph (r) of this section, and a finding of noncompliance has resulted.

(iii) Thirty calendar days have elapsed since the Secretary of Defense has filed a written report describing the violation and action to be taken with the committees of the House of Representatives and Senate that have jurisdiction over the program or activity in which the violation of this part exists.

(iv) Such action is limited to affect only the particular activity or program, or portion thereof, of the recipient where the violation exists.

(3) *Other sanctions.* A DoD Component may not impose the sanctions set out in paragraphs (q)(1) (iii) and (iv) of this section, unless:

(i) The DoD Component has given the recipient an opportunity for a hearing pursuant to paragraph (r) of this section, and a finding of noncompliance has resulted.

(ii) The action has been approved by the Secretary of Defense.

(iii) Ten calendar days have elapsed since the mailing of a notice informing the recipient of its continuing failure to comply with this part the action necessary to achieve compliance, and the sanction to be imposed.

(iv) During those 10 calendar days the DoD Component has made additional efforts to persuade the recipient to comply.

(r) *Hearings for recipients*—(1) *General*. When, pursuant to paragraph (q)(2)(ii) of this section, an opportunity for a hearing is given to a recipient, the DoD Component involved shall follow the procedures prescribed in paragraphs (r)(2) through (r)(6) of this section.

(2) *Notice*. The DoD Component concerned shall notify the recipient of the opportunity for a hearing by registered or certified mail, return receipt requested, when the recipient denies a tentative finding of noncompliance with this part.

(i) The DoD Component shall ensure that the notice:

(A) Describes the proposed sanctions to be imposed.

(B) Cites the section of this part under which the proposed action is to be taken.

(C) States the name and office of the DoD Component official who is responsible for conducting the hearing (hereafter referred to as the “responsible DoD official”).

(D) Outlines the issues to be decided at the hearing.

(E) Advises the recipient either of a date, not less than 20 calendar days after the date that the notice is received, by which the recipient may request that the matter be scheduled for a hearing, or of a reasonable time and place of a hearing that is subject to change for good cause shown.

(ii) When a time and place for a hearing are set, the DoD Component shall give the recipient and the complainant, if any, reasonable notice of such time and place.

(3) *Waiver of a hearing*. A recipient may waive a hearing and submit to the responsible DoD official, in writing, information or arguments on or before the date stated pursuant to paragraph (r)(2)(i)(E) of this section.

(i) A recipient waives its right to a hearing if it fails to request a hearing on or before a date stated pursuant to paragraph (r)(2)(i)(E) of this section, or fails to appear at a hearing that has been scheduled pursuant to that paragraph.

(ii) If a recipient waives its right to a hearing under this section, the responsible DoD official shall decide the issues and render a final decision that is based on the information available and that conforms to the requirements of paragraph (s)(4) of this section.

(4) *Hearing examiner*. Hearings shall be conducted by the responsible DoD official or by a hearing examiner designated by the official, provided that the hearing examiner shall be a field grade officer or civilian employee above the grade of GS-12 (or the equivalent) who is admitted to practice law before a Federal court or the highest court of a State, territory, commonwealth, or the District of Columbia.

(5) *Right to counsel*. In all proceedings under this section, the recipient and the DoD Component may be represented by counsel. The representation of the recipient will not be at U.S. Government expense.

(6) *Procedures*. Hearings authorized under this section shall be subject to the following: (i) Hearings shall be open to the public.

(ii) Formal rules of evidence will not apply. The DoD Component concerned and the recipient shall be entitled to introduce all relevant evidence on the issues stated in the notice of hearing issued pursuant to paragraph (r)(2) of this section, and those designated by the responsible DoD official or the hearing examiner at the outset of or during the hearing. The responsible DoD official or hearing examiner, however, may exclude irrelevant, immaterial, or repetitious evidence.

(iii) All witnesses may be examined or cross-examined, as the case may be, by each party.

(iv) All parties shall have the opportunity to examine all evidence offered or admitted for the record.

(v) A transcript of the proceedings shall be maintained in either electronic or typewritten form and made available to all parties.

(s) *Decisions*—(1) *Initial or proposed decisions by a hearing examiner*. If a hearing is conducted by a hearing examiner who is designated by the responsible DoD official pursuant to paragraph (r)(4) of this section, the hearing examiner shall either:

(i) Make an initial decision, if so authorized, that conforms to the requirements of paragraph (s)(4) of this section; or

(ii) Certify the entire record and submit to the responsible DoD official recommended findings and a proposed decision.

(2) *Review of initial decisions.* Initial decisions made by a hearing examiner pursuant to paragraph (s)(1)(i) of this section, shall be reviewed as follows:

(i) A recipient may file exceptions to an initial decision within 30 calendar days of receiving notice of such initial decision. Reasons shall be stated for each exception.

(ii) If the recipient does not file exceptions pursuant to paragraph (s)(2)(i) of this section, the responsible DoD official may notify the recipient within 45 calendar days of the initial decision that the responsible DoD official will review the decisions.

(iii) If exceptions are filed pursuant to paragraph (s)(2)(i) of this section, or a notice of review is issued pursuant to paragraph (s)(2)(ii) of this section, the responsible DoD official shall review the initial decision and, after giving the recipient reasonable opportunity to file a brief or other written statement of its contentions, issue a final decision that addresses each finding and conclusion in the initial decision and each exception, if any.

(iv) If the exceptions described in paragraph (s)(2)(i) of this section are not filed and the responsible DoD official does not issue the notice of review described in paragraph (s)(2)(ii) of this section, the initial decision of the hearing examiner shall constitute the final decision of the responsible DoD official.

(3) *Decisions by the responsible DoD official who conducts a hearing or receives a certified record.* If a hearing examiner who is designated by the responsible DoD official certifies the entire record and submits recommended findings and a proposed decision to the responsible DoD official pursuant to paragraph (s)(1)(ii) of this section, or if the responsible DoD official conducts the hearing, after giving the recipient a reasonable opportunity to file a brief or other written statement of its contentions, the responsible DoD official

shall render a final decision that conforms to paragraph (s)(4) of this section.

(4) *Contents of decisions.* Each decision of a hearing examiner or responsible DoD official shall state all findings and conclusions and identify each violation of this part. The final decision may contain an order pursuant to paragraph (q) of this section, providing for the suspension or termination of or refusal to grant or continue all or some of the Federal financial assistance under the program or activity involved and contain terms, conditions, and other provisions that are consistent with and intended to achieve compliance with this Directive.

(5) *Notice of decisions and certifications.* The responsible DoD official shall provide a copy of any certified record of a hearing and any initial or final decision to the recipient and the complainant, if any.

(6) *Review by the Secretary of Defense.* The responsible DoD official shall transmit promptly any final decision that orders a suspension, termination, or denial of Federal financial assistance through the ASD(MRA&L) to the Secretary of Defense. The Secretary may;

(i) Approve the decision;

(ii) Vacate the decision; or

(iii) Remit or mitigate any sanction imposed.

(t) *Restoring eligibility for financial assistance.* (1) A recipient that is affected adversely by a final decision issued under paragraph (s) of this section, may at any time request the responsible DoD official to restore fully its eligibility to receive Federal financial assistance.

(2) If the responsible DoD official determines that the information supplied by the recipient demonstrates that it has satisfied the terms and conditions of the order entered pursuant to paragraph (s) of this section, and that is complying with and has provided reasonable assurance that it will continue to comply with this part the responsible DoD official shall restore such eligibility immediately.

(3) If the responsible DoD official denies a request for restoration of eligibility, the recipient may submit a written request for a hearing that states

why it believes the responsible DoD official erred in denying the request. Following such a written request, the recipient shall be given an expeditious hearing under rules of procedure issued by the responsible DoD official to determine whether the requirements described in paragraph (t)(2) of this section, have been met. While any such proceedings are pending, the sanctions imposed by the order issued under paragraph (s) of this section, shall remain in effect.

(u) *Interagency cooperation and delegation.* (1) When several recipients are receiving assistance for the same or similar purposes from a DoD Component and another Federal agency, the DoD Component shall notify the ASD (MRA&L), or designee. Such notification shall be in writing and shall contain:

(i) A description of the programs and activities involved.

(ii) A statement of the amount of money expended on the programs and activities in the previous and current fiscal year by the DoD Component and the agency.

(iii) A list of the known primary recipients.

(2) The ASD(MRA&L), or designee, shall attempt to negotiate with the Federal agency a written delegation agreement that designates the agency or the DoD Component as the primary agency for purposes of ensuring compliance with section 504 of Public Law 93-112, as amended, and this part depending upon which of them administers a larger financial assistance program with the common recipients and other relevant factors. If necessary, the agreement shall establish procedures to ensure the enforcement of section 504 of Public Law 93-112, as amended, and this part. The ASD(MRA&L), or designee, shall provide written notification to recipients of an agreement reached under this subsection.

(3) When several recipients are receiving assistance for the same or similar purposes from two or more DoD Components, the DoD Components may negotiate a proposed written delegation agreement that:

(i) Assigns responsibility for ensuring that the recipient complies with this part to one of the DoD Components.

(ii) Provides for the notification to recipients and the responsible program officials of the DoD Components involved of the assignment of enforcement responsibility.

(4) No delegation agreement reached in accordance with paragraph (u)(3) to this section shall be effective until it is approved by the ASD(MRA&L), or designee.

(5) When possible, existing delegation agreements relating to title VI of the Civil Rights Act of 1964 shall be amended to provide for the enforcement of this part.

(6) Any DoD Component conducting a compliance review or investigating a complaint of an alleged violation by a recipient shall notify any other affected agency or DoD Component through the ASD(MRA&L), or designee, upon discovery that the agency or DoD Component has jurisdiction over the program or activity in question and shall subsequently inform it of the finding made. Such reviews or investigations may be conducted on a joint basis.

(7) When a compliance review or complaint investigation under this part reveals a possible violation of Executive Order 11246, titles VI or VII of the Civil Rights Act of 1964, or any other Federal law, the DoD Component shall notify the appropriate agency, through the ASD(MRA&L), or designee.

(v) *Coordination with sections 502 and 503.* (1) DoD Components shall use DoD 4270.1-M and Department of the Army, Office of the Chief of Engineers, Manual EM 1110-1-103, in developing requirements for the accessibility of facilities. If DoD Components encounter issues with respect to section 502 of the Rehabilitation Act of 1973, as amended, that are not covered by these publications, the ASD(MRA&L), or designee, may be consulted. If necessary, the ASD(MRA&L), or designee, shall consult with the Architectural and Transportation Barriers Compliance Board in resolving such problems.

(2) DoD Components may advise recipients to consult directly with the Architectural and Transportation Barriers Compliance Board in developing accessibility criteria.

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(3) DoD Components shall coordinate enforcement actions relating to the accessibility of facilities with the Architectural and Transportation Barriers Compliance Board and shall notify the ASD(MRA&L), or designee, of such coordination.

(4) If a recipient is also a Federal contractor subject to section 503 of the Rehabilitation Act of 1973, as amended, and the regulations thereunder (41 CFR part 60–741) and if a DoD Component has reason to believe that the recipient is in violation thereof, the DoD Component shall coordinate enforcement actions with the Department of Labor, Office of Federal Contract Compliance Programs. The DoD Component shall notify the ASD(MRA&L), or designee, of such coordination.

§ 56.10 Ensuring compliance with this part in programs and activities conducted by the Department of Defense.

(a) *Supplementary guidelines.* (1) Whenever necessary, the ASD(MRA&L), or designee, shall publish supplementary guidelines for programs and activities that are conducted by DoD Components and that are subject to this Directive. Prior to their issuance, the ASD(MRA&L), or designee, shall submit supplementary guidelines prepared pursuant to this subsection to the Coordination and Review Section, Civil Rights Division, Department of Justice, for review.

(2) The heads of DoD Components, or designees, shall be responsible for keeping the supplementary guidelines described in this section current and accurate. When a DoD Component head determines that a program or activity should be added to or deleted from the guidelines, that official shall notify the ASD(MRA&L), or designee, in writing.

(b) *Staff responsibilities.* The ASD(MRA&L), or designee, shall determine DoD Component compliance with this part as it pertains to programs and activities that are conducted by DoD Components and are subject to this part.

(c) *Filing of complaints.* (1) Complaints of discrimination in a program or activity conducted by a DoD Component may be filed directly with the ASD(MRA&L), or designee.

(2) DoD Components shall develop procedures, such as posters or other devices, to notify participants in the programs and activities listed in § 56.7(c) of their right to be free of discrimination because of handicap in those programs and activities and of their right to file complaints of discrimination with the ASD(MRA&L), or designee.

(d) *Investigations of complaints.* (1) The ASD(MRA&L), or designee, shall investigate complaints of discrimination in programs and activities that are conducted by DoD Components and are subject to this part.

(2) A case record of each investigation shall be compiled in accordance with § 56.9(j)(2).

(e) *Results of investigations.* If the complaint investigation results in a determination by the ASD(MRA&L), or designee, that a DoD Component's program or activity is not complying with § 56.9, the ASD(MRA&L), or designee, shall proceed as prescribed in § 56.9 (n) through (v). Hearings prescribed under § 56.9(r) however, need not be conducted. If the ASD(MRA&L), or designee, determines that the DoD Component is in compliance, the ASD(MRA&L), or designee, shall notify the complainant within 15 calendar days of such determination.

(f) *Written notice.* If an investigative report concludes that there has been a violation of this part in a program or activity conducted by a DoD Component and the ASD(MRA&L), or designee, accepts that conclusion, that official shall issue to the head of the DoD Component a written notice describing the apparent violation, the corrective actions necessary to achieve compliance, and a suspense date for completion of the corrective actions.

(g) *Effecting compliance.* When necessary to overcome the effects of discrimination in violation of this part the ASD(MRA&L), or designee, may require a DoD Component to take remedial action similar to that in § 56.9(n)(2).

(h) *Employment.* DoD Components that conduct Federal programs or activities covered by this part that involve employment of civilian persons to conduct such a program or activity must comply with section 501 of the Rehabilitation Act of 1973, as amended,